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THE
Arraignment, Tryal, and Condemnation,
OF
Capt. John Quelch,

And Others of his Company, &c.

FOR

Sundry *Piracies, Robberies, and Murder*, Committed upon the Subjects of the King of *Portugal*, Her Majesty's Allie, on the Coast of *Brasil*, &c.

WHO

Upon full Evidence, were found Guilty, at the *Court-House* in *Boston*, on the Thirteenth of *June*, 1704. By Virtue of a Commission, grounded upon the Act of the Eleventh and Twelfth Years of King *William*, *For the more effectual Suppression of Piracy*. With the Arguments of the QUEEN's Council; and Council for the Prisoners upon the said Act.

PERUSED

By his Excellency JOSEPH DUDLEY, Esq; Captain-General and Commander in Chief in and over Her Majesty's Province of the *Massachusetts-Bay*, in *New-England*, in *America*, &c.

To which are also added, some PAPERS that were produc'd at the Tryal abovesaid.

WITH

An Account of the Ages of the several Prisoners, and the Places where they were Born.

L O N D O N :

Printed for Ben. Bragg in *Avenary-Lane*, 1704.

(Price One Shilling.)

3. Octob.

W. Musgrave



A T A

Court of Admiralty

Held at *Boston*, in Her Majesty's Province of the *Massachusetts-Bay*, in *New-England*, in *America*, the 13th Day of *June*, Anno Dom. 1704.

PRESENT,

JOSEPH DUDLEY, Esq; Captain-General and Governour in Chief of the Provinces of the *Massachusetts-Bay* and *New-Hampshire*, in *New-England*, in *America*, and President of the Court, &c.

Thomas Povey, Esq; Lieutenant-Governour of the Province of the *Massachusetts-Bay*.

John Usher, Esq; Lieutenant-Governour of the Province of *New-Hampshire*.

Nathaniel Byfield, Esq; Judge of the Vice-Admiralty for the Provinces aforesaid.

Samuel Sewall, Esq; First Judge of the Province of the *Massachusetts-Bay* aforesaid, and One of the Council.

Elisha Hutchinson

John Phillips

John Foster

John Wally

Joseph Lynde

John Thacher

Esqrs.

Isaac Addington, Esq; Secretary, and One of the Council.

Jabrael Brenton, Esq; Collector, &c. of Her Majesty's Customs, &c. in *New-England*.

Eliakim Hutchinson

Penn Townsend

Edward Brumfield

Samuel Legg

Isaac Winslow

Samuel Appleton

Esqrs.

Members of Her Majesty's Council in the Province of the *Massa. Bay*, &c.

Members of Her Majesty's Council in the Province of the *Massa. Bay*, &c.

The Court being Sat, Proclamation was made for
SILENCE.

AN D then the Statute made in the Eleventh and Twelfth Year of the late King **WILLIAM**, Entituled, *An Act for the more effectual Suppression of Piracy*: And also the late King **WILLIAM**'s Commission under the Great Seal, pursuant to the Act aforesaid, constituting the Court, &c. were publickly Read.

After which **John Valentine**, Gent. Notary Publick, was Sworn Register of the Court by the President: And then the Register Administred the Oath prescribed to the President; and then the President Administred the Oath to the other Commissioners in Open Court, pursuant to the Act aforesaid.

And then the Court was Open'd by Three Proclamations as a Court of Admiralty, for Tryal of Pirates, &c.

After which was Read Her Majesty's Proclamation, signifying Her Royal Pleasure, that all Persons being in Office of Authority or Government, at the Decease of the late King, should so continue till Her Majesty's further Directions: Then was Read Two Instructions from Her Majesty to his Excellency in the Tryal of Pirates, to Govern the same according to the above-said Act of Parliament, and Commission thereupon.

A Warrant having been Sign'd by several of the Commissioners to the Keeper of the Prison, to bring Captain *John Quelch* before them, to answer several Articles of Piracy, Robbery, and Murder, exhibited against him and Company, pursuant to the Governour's Order for the Sitting of the Court this Day.

The Court Adjourned till Three of the Clock in the Afternoon.

When the Court being Met and Open'd, *Matthew Pym*, *John Clifford*, and *James Parrot*, (the first of whom had surrendred himself quickly after his Arrival to his Excellency the Governour) were brought to the Bar, and Arraigned upon several Articles of Piracy, Robbery, and Murder, drawn against Captain *Quelch*, and others his Accomplices.

Of the Tenor following, Mutatis Mutandis.

At a Court of Admiralty held at Boston, in Her Majesty's Province of the Massachusetts-Bay, in New-England, in America, the Thirtieth Day of June, Anno Dom. 1704. And in the Third Year of the Reign of our Soocraign Lady ANNE, of England, &c. QUEEN.

Articles of Piracy, Robbery, and Murder, then and there Exhibited against John Quelch, late of Boston in the said Province, Mariner, Lieutenant of the Brigantine Charles, whereof Daniel Plowman, Mariner, Deceased, was late Commander.

You stand here Accused of Piracy, Robbery, and Murder.

Imprimis. **T**Hat notwithstanding the said Brigantnie was fitted out by several worthy Merchants of *Boston*, Good and Loyal Subjects of Her Majesty, (against the *French* and *Spanish* Kings, their Vassals, Subjects and Allies, the Declared Enemies of Her most Sacred Majesty, *Queen Anne*) who obtained a Commission for that purpose from his Excellency *Joseph Dudley*, Esq; Her Majesty's Captain-General, Governour and Commander in Chief, in and over the said Province; by force whereof, and in pursuance of the necessary Instructions to your Commander, the said Captain *Plowman* delivered, (whereof you were apprized.) He with his Company Sailed in the said Brigantine from *Boston* the Fourth Day of *August*, 1703. for *Newfoundland*, and *L'Accade*; but falling violently Sick, and languishing in his Cabbin, you with divers others, for some time bolted the Cabbin Door upon him, and he, shortly afterwards, *that is to say*, the Sixth Day of the said Month of *August*, Died: You neglected his Orders, and those of your Owners, to return with the said Private Man of War to *Boston*, would not set on Shore *Matthew Pym* and *John Clifford*, Two of your Company, (who dreading your Pyratrical Intention) earnestly desired the same; but bore up the Helm to Sea, directing your Course for *Ferdinando* Island, and the Coast of *Brasil*, whereby it is open, manifest, you intended Murders, Piracy, and Robberies; which afterwards you perpetrated.

I. For that you the said *John Quelch*, with divers others, on or about the Fifteenth Day of *November*, 1703. In the Second Year of Her Majesty's Reign, at or near the Latitude of Seven, South Latitude, on the Coast of *Brasil*, at or near Cape St. *Augustine*, by Force and Arms upon the High Sea, (within the Jurisdiction of the Admiralty of *England*,) Piratically and Feloniously did Surprize, Seize, and Take a small Fishing Vessel, (having *Portuguese* Men on Board) and belonging to the Subjects of the King of *Portugal*, (Her Majesty's good Allie) and out of her then and there, within the Jurisdiction aforesaid, Feloniously and Piratically, did by Force and Arms take and carry away a quantity of Fish and Salt, to the value of *Three Pounds*.

II. That you the said *John Quelch*, with divers others, on or about the Eighteenth Day of *November*, 1703. In the Second Year of Her said Majesty's Reign, in or near the

the Latitude of Eight South near Cape St. *Augustine* aforesaid, by Force and Arms upon the High Sea, (within the Jurisdiction of the Admiralty of *England* aforesaid) Pyrat-ically and Feloniously, did Surprize, Seize, and Take a small Brigantine of the Bur-then of about fifteen Tons, (having *Portuguese* Men on Board,) and belonging to the Subjects of the King of *Portugal*, (Her Majesty's good Allie) bound for *Parenabuck*; and out of her then and there, within the aforesaid Jurisdiction, Feloniously and Pyrat-ically, did by Force and Arms, Take and Carry away Five Chests of *Brasil* Sugar to the value of One Hundred and Fifty Pounds, Six Barrels of Molasses, to the value of Six Pounds.

III. That you the said *John Quelch*, with divers others, on or about the Twenty-fourth Day of *November*, 1703. in the Second Year of Her Majesty's Reign, at or near the Latitude of Nine South near Cape St. *Augustine* aforesaid, by Force and Arms upon the High Sea, (within the Jurisdiction of the Admiralty of *England* aforesaid,) Pyrat-ically and Feloniously did Surprize, Seize, and Take a small Brigantine of the Burthen of about Forty Tons, (having *Portuguese* Men on Board,) and belonging to the Subjects of the King of *Portugal*, (Her Majesty's good Allie) bound for *Parenabuck*; and out of her then and there, within the Jurisdiction aforesaid, Feloniously and Pyrat-ically, did by Force and Arms, Take and Carry away Five Chests of *Brasil* Sugar to the value of One Hundred and Fifty Pounds, a quantity of Molasses, Rice and Farine, to the value of Ten Pounds.

IV. That you the said *John Quelch*, with divers others, on the Fifth of *December*, 1703. in the Second Year of Her Majesty's Reign, at or near the Latitude of Thirteen South Latitude off of *Mora*, by Force and Arms upon the High Sea, (within the Jurisdiction of the Admiralty of *England* aforesaid) Pyrat-ically and Feloniously did Surprize, Seize, and Take a small *Portuguese* Shallop, Navigated by, and belonging to the Subjects of the King of *Portugal*, (Her Majesty's good Allie) and out of her then and there, within the Jurisdiction aforesaid, Feloniously and Pyrat-ically did by Force and Arms, Take and Carry away a quantity of Earthen Ware, value Five Shillings, two Jarrs of Rhum, value Ten Shillings, a quantity of Linnen Cloth, value Ten Shillings.

V. That you the said *John Quelch*, with divers others, on the said fifth Day of *December*, 1703. in the Second Year of Her Majesty's Reign, at or near the Latitude of Thir-teen South off or near *Mora* aforesaid, by Force and Arms upon the High Sea, (with-in the Jurisdiction of the Admiralty of *England*) Pyrat-ically and Feloniously, did Sur-prize, Seize, and Take a *Portuguese* Boat, Navigated by, and belonging to the Subjects of the King of *Portugal*, (Her Majesty's good Allie) and out of her then and there, (within the Jurisdiction aforesaid) Feloniously and Pyrat-ically did by Force and Arms, Take and Carry away some pieces of Cloth, value Five Shillings, Two Pieces of Silk, value Twenty Pounds, and sunk the said Boat, value of Thirty Pounds.

VI. That you the said *John Quelch*, with divers others, on the Ninth Day of *De-cember*, 1703. in the Second Year of Her Majesty's Reign, at or near the Latitude of Thirteen South off of *Mora* aforesaid, by Force and Arms upon the High Sea, (with-in the Jurisdiction of the Admiralty of *England* aforesaid) Pyrat-ically and Feloniously did Surprize, Seize, and Take a *Portuguese* Brigantine, Burthen above Twenty Tons, and an open Boat, Navigated by, and belonging to the Subjects of the King of *Por-tugal*, (Her Majesty's good Allie) and out of them then and there, within the Jurif-diction aforesaid, Feloniously and Pyrat-ically did by Force and Arms, take about Fifty Pounds in *Portuguese* Coined Money, a Negro Boy, value Twenty Pounds, some Rice and Farine, value Five Shillings.

VII. That you the said *John Quelch*, with divers others, on the Twentieth Day of *December*, 1703. in the Second Year of Her Majesty's Reign, at or near the Latitude of Twenty Three and Forty Minutes South, upon the Coast of *Brasil*, near the Island of *Grandee*, by Force and Arms upon the High Sea, (within the Jurisdiction of the Ad-miralty of *England*) Pyrat-ically and Feloniously did Surprize, Seize, and Take a small

Portuguese Brigantine, Burthen about Twenty Five Tons, Navigated by, and belonging unto the Subjects of the King of *Portugal*, (Her Majesty's good Allie) and out of her then and there, within the Jurisdiction aforesaid, Feloniously and Pyratically did by Force and Arms, Take and Carry away Five Chests of *Brasil* Sugar, value One Hundred and Fifty Pounds, and a small parcel of *Portuguese* Money, some Gold and Silver, value Fifty Pounds.

VIII. That you the said *John Quelch*, with divers others, on the Fefteenth Day of *January*, 1703. in the Second Year of Her Majesty's Reign, at or near the Latitude of Twenty Four South upon the Coast of *Brasil*, by Force and Arms upon the Hight Sea, (within the Jurisdiction of the Admiralty of *England*) Pyratically and Feloniously did Surprize, Seize, and Take a *Portuguese* Brigantine, Burthen about Thirty Five Tons; she came from *Spirito Santo*, bound for *Rigineer*, Navigated with, and belonging to the Subjects of the King of *Portugal*, (Her Majesty's good Allie) and out of her then and there, within the Jurisdiction aforesaid, Feloniously and Pyratically, by Force and Arms, did Take and Carry away One Hundred Weight of Gold Dust, value Six Thousand Pounds, and Nine Hundred Pieces of Coined Gold, value Nine Hundred Pounds.

IX. That you the said *John Quelch*, with divers others, on the Seventeenth Day of *February*, 1703. in the Second Year of Her Majesty's Reign, at or near the Latitude of Thirty Five and Fifty Minutes, near the River of *Plate*, by Force and Arms upon the High Sea, (within the Jurisdiction of the Admiralty of *England* aforesaid) Pyratically and Feloniously did Surprize, Seize, and Take a *Portuguese* Ship, Burthen about Two Hundred Tons, Twelve Guns, loaden with Hides and Tallow, Bound to *Bayes*, Navigated with, and belonging unto the Subjects of the King of *Portugal*, (Her Majesty's good Allie) and then and there, within the Jurisdiction aforesaid, did Feloniously Kill and Murder the Commander thereof, and Wounded several others, and out of her Pyratically, by Force and Arms, did Take and Carry away Twelve Barrels and a Pipe of Beef, value Ten Pounds, four great Guns, value Twenty Pounds, four Pat-teraro's, value Forty Shillings, Twelve small Arms, value Six Pounds, One Hundred weight of Shot, value Three Pounds, two Barrels of Powder, value Twelve Pounds, a new Main-sail, Fore-sail, and Foretop-sail, value Forty Pounds, a Negro Boy, value Forty Pounds, and about Two Hundred Pieces of Eight, *Spanish* Money, contrary to the Statues in that Case made and provided.

Upon which Articles, *Mutatis Mutandis*, *Matthew Pimer*, *John Clifford*, and *James Parrot* being Arraigned severally, pleaded Guilty.

Ordered, That *Matthew Pimer*, *John Clifford*, and *James Parrot*, be received into the Queen's Mercy, and be declared Witnesses in behalf of the Queen, against *John Quelch* and Company, for their several Piracies, Robberies, and Murder.

Ordered, That *Matthew Pimer*, *John Clifford*, and *James Parrot*, stand within the Bar, and be Sworn as Witnesses on Her Majesty's behalf.

Ordered, That Captain *John Quelch* be brought to the Bar; where being brought, he was Arraigned upon the several foregoing Articles of Piracy, &c. to which the said *John Quelch* pleaded, Not Guilty, but moving for time to prepare for his Tryal.

Ordered, That time be given him till *Friday* Morning next, at Nine of the Clock.

The Prisoner also moved to know whether he might not have Council allow'd him upon any Matter of Law that might happen upon his Tryal.

Curia. The Articles upon which you are Arraigned, are plain Matters of Fact; however, that you may have no Reason to complain of Hardship, Mr. *James Meinzie*, Attorney at Law, may assist you, and offer any Matter of Law in your behalf upon your Tryal.

Ordered, That the Prisoner at the Bar have a Copy of the Articles Exhibited against him; and then he was Remanded to Prison.

Ordered, That a Minute be made, that it is declared by *Pimer*, *Clifford*, and *Parrot*, that *James Thurbar* of *Swansey*, was not of the Company belonging to the Brigantine *Charles*, though named in the first Articles for the Voyage.

Ordered, That *John Lambert*, *John Miller*, *William Wilde*, *Benjamin Perkins*, *Christopher*

pher Scudimore, James Austin, John Dorothy, Nicholas Richardson, Richard Lawrence, John Templeton, John Pitman, Charles James, William Jones, Erasmus Peterson, John King, Francis King, Charles King, Peter Roach, Dennis Carter, and John Carter, be brought to the Bar; who being placed at the Bar, were severally Arraigned upon the Articles of Piracy, Robbery, and Murder before-mentioned, *Mutatis Mutandis*: To which they severally pleaded, Not Guilty, and then mov'd for Council, and time to prepare for their Tryal.

Ordered, That Mr. Meinzie assist the Prisoners in any Matters of Law, and that the Prisoners prepare for their Tryal on *Friday* next at Nine of the Clock in the Morning. And then the Court Adjourn'd till *Friday* Morning.

Friday, June 16th.

Proclamation being made, the Court was Opened, and Captain *Quelch* being brought to the Bar, presented a Petition in behalf of himself, and the rest of the Prisoners, praying for further time.

Ordered, That the Prisoners be allowed time till *Monday* Morning next at Nine of the Clock, and then peremptorily to come upon their Tryals: A Motion was also made by the Prisoners Council, that the Queen's Witnesses might be kept asunder till the Prisoners came upon their Tryals; to which it was answered by the Council for the Queen, that though in cases of High Treason, and some other cases, the Prisoners have been so far favoured, as that upon their Tryals, Approvers, or other Evidences for the Crown, have been kept out of the hearing of one another, while they were giving their several Evidences, yet to seperate them before their Tryals, was without President; upon which the Court deny'd the Motion of the Prisoners Council in that Matter; but directed, that at their Examination at the Bar they should be seperate. Then the Court Adjourn'd till *Monday* Morning at Nine of the Clock.

Monday the Nineteenth of *June*, 1704. at Ten of the Clock in the Morning.

The Court being Opened, and Captain *Quelch* set to the Bar.

Ordered, That his Irons be taken off during his Tryal.

Mr. *Newton* of Council for the Queen. May it please Your Excellency, and the Honourable Commissioners of this Court: The Prisoner at the Bar stands Charged, for that he the said *John Quelch* late of *Boston*, in the Province of the *Massachusetts-Bay*, &c. Mariner, Lieutenant of the Brigantine *Charles*, whereof *Daniel Plowman*, Mariner, Deceased, was late Commander, notwithstanding the said Brigantine, &c. Which Articles, when we have prov'd upon the Prisoner at the Bar, we doubt not but Your Excellency, and the rest of the Honourable Commissioners of this Court, will do him, our Nation, and the World that Justice, as to condemn and punish him for the same.

Paul Dudley, Esq; Attorney General and Her Majesty's Advocate for the Court of Admiralty. May it please Your Excellency, and the rest of the Honourable Commissioners of this Court: The Prisoner at the Bar stands Articled against for, and charged with several Piracies, Robberies, and Murder committed by himself and Company upon the High Sea, (upon the Subjects of the King of *Portugal*, Her Majesty's good Allie) the worst and most intollerable of Crimes that can be committed by Men. A Pyrate was therefore justly called by the *Romans*, *Hostis Humani Generis*: And the Civil Law faith of them, that neither Faith nor Oath is to be kept with them; and therefore if a Man that is a Prisoner to Pirates, for the sake of his Liberty, promise a Ransom, he is under no Obligation to make good his Promise; for Pirates are not Entitled to Law, not so much as the Law of Arms; for which Reason 'tis said, if Piracy be committed upon the Ocean, and the Pirates in the Attempt happen to be overcome, the Captors are not obliged to bring them to any Port, but may expose them immediately to Punishment, by Hanging them at the Main-Yard: A sign of its being of a very different and worse Nature than any Crime committed upon the Land; for Robbers and Murderers, and even Traytors themselves, mayn't be put to Death without passing a formal Tryal: And if the fate of the Prisoner at the Bar, with his Company, had allowed them to have been overcome in their Piracies, &c. and immediately hung up before the Sun, it had been very just upon them. But being then suffered to live, and now brought unto a Court of Justice, they are to be used, treated, and tryed as the Laws of *England*, and our own Country do direct. Hereupon I must observe, that until the Statute of the 28th. of *Henry* the Eighth, all Piracies, Robberies, and Murder, committed upon the Sea, were Tryed before the Admiral,

ral, his Lieutenant or Commissary, after the Course of the Civil Law, the Nature whereof was, that before any Judgment of Death could be given against the Offender, either they must plainly confess their Offences, (which they will never do without Torture) or else their Offences be so plainly and directly proved by Witness indifferent, such as saw their Offences committed, which was next to impossible to be had; therefore that Statute Enacted, That the said Crimes should be tryable in any County in *England*, by such and such Commissioners, and the Tryal to be according to the Course of the Common Law: This Act continues in *England* in force to this Day; and till very lately serv'd for all Piracies that were committed in the Plantations, or any parts beyond the Seas. For *Kidd*, the last Pirate that went from this Country, was try'd upon that Statute: But it proving very troublesome and chargeable to transport Pirates and the Witnesses from the several Plantations, there was another Act of Parliament made in the Eleventh and Twelfth Years of the late King *William*, that provides principally and particularly for the Tryal of all Pirates that are Seiz'd in any of the Plantations. It is by Virtue of this Act of Parliament, and a Commission pursuant thereto, that your Excellency and this Honourable Court are now Sitting in Judgment upon the Prisoner at the Bar, and his vile Accomplices; and though it may be thought by some a pretty severe thing, to put an *English*-man to Death without a Jury, yet it must be remembred, that the Wisdom and Justice of our Nation, for very sufficient and excellent Reasons, have so ordered it in the Case of Piracy; a Crime, which as before I observ'd, scarce deserves any Law at all: Besides, the late Statute hath appointed such Commissioners as will take care to do equal Justice to the Prisoner on the one Hand, and to the Crown and Allies of *England* on the other. The *English* Word Pirate, is derived from a Word that signifies *Roving*, for Pirates, like Beasts of Prey, are Seeking and Hunting upon the Ocean for the Estates, and sometimes the Lives of the Innocent Merchant and Mariner: His Character and Description is thus: A Pirate is one who to enrich himself, either by Surprise or open Force, sets upon Merchants and others trading by Sea, to spoil them of their Goods or Treasure, and oftentimes sinking their Vessels, and bereaving them of their Lives: And 'tis no wonder if Piracy be reckon'd a much greater and more pernicious Crime, than Robbery upon the Land, because the Consideration of the General Navigation and Commerce of Nations, is far beyond any Man's particular Property: Besides, whereas Robbery upon the Land is most commonly from particular Persons; Piracy is from many, and oftner attended with the Death of others: Thus it was in the Case now to be tryed; One of the Captains of one of the *Portuguese* Vessels, being unfortunately, if not basely Kill'd and Murdered in the Action. But before we proceed to the several Articles upon which the Prisoner is to be tryed, I beg leave a little to set forth the aggravating Circumstances of the Crimes committed by these vile Men. And to begin with their Mutiny, their Rebellious, Inhuman, I wish I might not say, their Murderous Usage of their worthy Commander, Captain *Plowman*; God knows how far their Treatment of him might hasten his End; however, that must be answered for at a Higher Tribunal. The next thing I would observe in this Matter, is, their Commission which they obtain'd from Her Majesty's Government of this Province, a Sword to fight the open and declared Enemies of Her Sacred Majesty; but instead of drawing it against the *French* and *Spaniards*, they have sheathed it in the Bowels of some of the best Friends and Allies of the Crown of *England* at this Day; the *Portuguese* being Confederate with Her Sacred Majesty against the *French* and *Spaniards*, for the Peace, Rights and Liberties of *Europe*: This was the Blasphemy, the Treachery and Cowardise of this Matter, that instead of fighting for Honour with the *French*, or Money with the *Spaniards*, they must go and surprize a few honest and peaceable Men, and our good Friends, in their Lawful Occasions, that neither thought nor meant any Harm: Thus a Man falls before wicked Men. The third thing I would observe, is, the Perfidious Impudence of these Men, for as they Sail'd along the Coast of *Brasil*, they put in at one or two places, and assured the *Portuguese* of their Friendship and Kindness, that their Designs were against the *French* and *Spaniard*; and yet at the very next Port, a few Leagues distant, they robb'd and plundered some of the Neighbours and Friends of those they had seen the Day before. The fourth and last thing that I would mention, is, the Number of their Crimes, for it was not once, twice, nor thrice, that would serve their turns, but they go on in the Repetition of their Wickedness, till they were glutted, and thought they had enough of it: And

and as to the Prisoner now at the Bar, as his share in just and lawful prizes would have been at least double to any other, so no doubt but the same measure will be of his guilt in all this matter: We shall now, May it please this Honourable Court, proceed to prove the several Articles charged upon the Prisoner; and our proof will be partly presumptive, partly circumstantial, and partly positive and down right: the presumptive part of the proof, is the manner of their coming to this place, being in that sort as renders them suspicious to every body, but especially I would observe their not being able to give any tolerable account from whence they came, or had their treasure: This was what induc'd their Owners to give an Information to the Government, of the Matter, and our own Law in this [See the Appendix.] Country against Piracies, is very plain in this point of presumption.

The second proof that we shall offer will be what we call circumstantial, and indeed the circumstances of this matter are so many, that render it undoubted, but that the Prisoner with his Company have been guilty of the Articles charged upon him.

Then in the third place, there is that which we call positive and downright proof, viz. the Confession and Evidences of their Accomplices, who are now the Queen's Witnesses.

Mr. John Colman, and Mr. William Clark were Sworn to give Evidence, &c. and then produc'd Captain Daniel Plowmans Commission, which was read, as also his Instructions, and then his Owners Orders; as also the said Plowman's Letters from Marblehead to his Owners, then a Copy of the Owners Letter was read, which they sent to the several Islands, with His Excellencies Letter to the several Governours, &c. All which are annexed.

Mr. Colman made Oath to their being true Copies of their Originals: After this Mr. Clark brought in to Court several long Spada's, a Portuguese Ensign, two skins full of Sugar, upon one of which was a Direction, and it being thought to be in Portuguese, Edward Lyde Esq; and Mr. Samuel Frazon being Sworn Interpreters, acquainted the Court that that Skin of Sugar was directed to a person in Lisbon, adding withal, that if it had been Spanish, it would have been *al Signior*; whereas it was *Para*, &c. Whereupon the Skins were opened, and full of what was adjudged to be Brasil Sugar.

Mr. Lyde, also making Oath, that having been at Maderas, he had seen several Hundred of those *Seroins* or Skins of Sugar sent from Brasil, and that he verily believed, that what was now produc'd was Brasil Sugar.

The Ensign or Colours were expos'd also in Court, and plainly seen to be Portuguese, and Mr. John Colman, and Mr. William Clark made Oath, that the Spada's, Skins, Ensign and other things were taken out of the Brigantine *Charles*, since her Arrival here.

Mr. John Noyes Goldsmith also was Sworn, and made Oath, that he had received of the Prisoner at the Bar, since his Arrival in the Brigantine *Charles*, a considerable quantity of Coynded Silver Money, and saw many of the Pieces to be Portugal Money, and judg'd the rest to be so too, but cannot Swear it, the Prisoner at the Bar being then in his Shop, and melting them down himself.

After this Mr. Treasurer with his Deputy came in with the Bag of Gold and Treasure brought in the Brigantine *Charles*, which being Seiz'd, was committed to the custody of the Treasurer of the Province and others, by order of the Governour and Council.

Mr. Jeremiah Allen being Sworn, depos'd, that the Bag he had now in Court, contain'd the Treasure that was committed to the Treasurer and others.

Ordered, That Mr. Colmans's parcel of Gold be opened, who being asked whence he had that Gold, made answer, that he receiv'd that and all the rest of the Owners Shares, from the Prisoner at the Bar; upon viewing the Coined Gold, they were all found Portuguese Gold, and several of the Pieces were found to be Coined in 1703. Upon this the President observed, that the Money being Coined so lately, it was very improbable it should ever have been out of Portuguese hands, Inhabitants of Brasil.

After this, some Prints that came in the Brigantine *Charles* were Examin'd, and found to be in the Portuguese Language.

After this, a young Negro Boy, brought in by the Prisoner at the Bar and Company, was set up by order of the Court, was Examin'd, and the Interpreters acquainted the Court that he was a Baptis'd Negro, his name *Joachim*, that he lived with a Portuguese,

Portuguese, his Masters name *Josapho Galeno*, that he liv'd in the Bay of *All-Saints*, in *Brasil*, that he was taken by an *English* Brigantine, and that the Prisoner at the Bar was then on Board the Brigantine that took him, and that when he was taken, he was pretty near the Land in an open Boat, with Fish and other things in it, and that there were two *Portuguese* Men in the Boat at the same time.

After this the Court ordered the Interpreters to try the Negro Boy by *Spanish* and *French* Questions: But it was found he understood neither.

Queens Council. May it please your Excellency, and the rest of the Honourable Commissioners, we shall now proceed to an higher proof of this matter, by Examining those that have been allow'd to be the Queen's Evidences against the Prisoner at the Bar; and the rest of his Company.

We shall begin with *Matthew Pym*, a skilful Mariner, who was Shipt by Captain *Plowman* himself, to go against the *French*, &c.

Ordered, That *Pym* be Sworn, the other two Witnesses remov'd out of the hearing. Upon this, *Pym*'s Examination was read, which he Swore to the truth of.

President. What reason had you to believe they were *Portuguese* that you Robbed? Can you speak or understand *Portuguese*?

Pym. No Sir, I do not understand their Language, but believe them to be *Portuguese*, because we took them upon the Coast of *Brasil*; their Lading and Ensigns made me conclude they were *Portuguese*.

Queens Council. If your Excellency please, we will Examine the Witness upon each of the Articles and Matters the Prisoner at the Bar is charg'd with; but before we come to Articles, we'll Examine him as to the Prisoners behaviour towards Captain *Plowman*.

Pym. *Anthony Holding* was the Man that Bolted the Door upon the Captain, the Prisoner was then on Shoar, but came on Board that night, and resolv'd to go to Sea, and after the Captains Death took the Command of the Brigantine.

Queens Council. If Your Excellency please we'll now read the first Article of Piracy, and see what the Witness can say to it. Which being read.

Pym. They were five *Portuguese* on board that Vessel.

Quest. Was the Prisoner then in the Command of the Brigantine?

Pym. *Ans*. The Prisoner was Commander of the Brigantine during the whole Voyage.

Q. Did none of them you took, ask the reason why you took them?

A. No, not that I know of; our Interpreter *John Twist*, had a great deal of discourse with the Men we had taken, and said they were *Portuguese* that were taken now, and so afterwards; this first Vessel was a small Fishing Vessel, out of which we took some Fish and Salt.

Article 2. Q. What do you know as to the second Article?

A. I remember the taking of that Brigantine, much in the same Latitude with the other, but nearer the Land; three White Men, and two Negroes were on Board of her. This Brigantine had some *Brasil* Sugar and Molasses, two White Men and a Negro Entred themselves to go with us, our Interpreter telling them we intended for the River of *Plate*, and to take the *Spaniards*; but afterwards as we took Prizes, the two White Men hid themselves, that their Country-men might not see them.

Article 3. Q. As before.

Pym. I remember the taking of that Vessel, the Prisoner was then our Commander, and went on Board of her himself, she was taken in sight of Land, and Bound to *Parnebuck*.

Q. Did not these People seem very much troubled that you should take them, you being *English* Men, and at Peace with them?

A. They were told to the best of my knowledge, that we were *French*-men.

Article 4. Q. As before.

A. I remember the taking of this Earthen Ware Vessel within three Leagues of the Shore, she had three Men on Board her, came from *Bayes*, and Bound to some Neighbouring Port, we gave the Men their Boat again, and they went to *Bayes*, the Prisoner was then on Board the Tender that took her.

Quest. What Tenders do you mean?

Answer. We made use of one or two of the first Vessels; we took and put some of our

our own Men on Board of her, and kept her the greatest part of the Voyage.

5. *Article Read*, and *Pimer* being ask'd, saith, He remembers the taking this Boat within three Leagues of the Land, saw the Flag of the Castle at that time, she was taken by the Tender; *Quelch* and about 24. of our Men on Board her; we took two Prizes this Day; the Boat we took at this time was stav'd by some of the Company, as they told me, and afterwards sunk, the Men we took on Board the Boat, were all *Portuguese*, to the best of my knowledge.

Article 6. Being Read, *Pimer* being ask'd, saith, That this Vessel was taken with the Tender, and *Quelch* on Board her, the Negro Boy *Joachim*. was taken out of this Vessel, and about Fifty Pounds, Money. The said Negro Boy being now Examined, saith, there was a Young Man on Board, that had some Money, and that it was in a small Canvas Bag.

Pimer. 'Twas a Canvas Bag to the best of my Knowledge, there was some Rice and Farine, which we took out of her, and then let the Men go away with their Vessel, after we had Pillaged it.

Article 7. Read, *Pimer*. This Vessel was taken near the *Tropick* by *Quelch* in the Tender, but I was then on Board the Brigantine *Charles*, the Quarter-master had the Money that was taken out of her, being some Coyned Gold and some Silver; this Vessel was taken very near the Shoar, about two Leagues from the place whence she came, and was bound to *Regineer*. I saw her when they brought her out of the Road, there was but one White Man on Board her, he said he was a Dutch man, and afterwards of *Jutland*; because the Captain would not give him a Share equal with the rest, he threatned he would inform against them, whereupon the major part order'd him to be set on Shoar, giving him a Gun and some Powder and Shot, he could speak *Portuguese* very well: This Vessel was taken near the Island of *Grandee*.

Article 8. Read, *Pimer*. I was in the Boat that took the Gold Brigantine, and Commanded to do it by the Captains Order, We had found some of the Gold before the Captain came on Board, he took the Gold and carryed it himself on Board the Brigantine *Charles*: I saw it Weighed about three Days after: I saw the Coyned Gold taken, it had a late date, some a year or two standing. The Vessel came from *Spirito Sancto*, was taken within two Miles of the Land, and under Sail, had on Board 14. Men, all Whites, two Women of good Fashion: There were Ten hands in the Boat with me when we took her; there was no body on Board her could speak any Language I understood; We kept them on Board our Brigantine till next Day, and then gave them their Briganteen again.

Article 9. Prime. This Ship was taken by our Brigantine *Charles*, the Prisoner at the Bar then our Commander being on Board, the River of Plate was there 6 or 7 Leagues over; We gave her chase about Two Days, she fir'd Three Guns at us before she put out her colours, which were *Portuguese*, her Ensigns were not put up, till within Half an Hour before she was taken, I was not on Board her, but Capt. *Quelch* was, though many of our Men had entred her before he did, she had about 35 Men and 12 Guns; when this Ship fired upon us, we had *English* colours flying, We kept the Ship for some time, and took out of her what is set forth in the 9th article. This Ship came from a *Portuguese* Castle, had been out about 24 hours, and was bound for *Bayes*.

Pre. Set up the Negro Boy, who was taken in this Ship; which being done and examined by the Interpreters, saith, his Name is *Emanuel*, that he was baptized, lived in the River of Plate, his Masters Name was *Bastian*, was a *Portuguese*, and Captain of the Ship, that was taken by the Brigantine, in the River of Plate, that he saw one of *Quelch's* Company shoot his Master with a Pistol, that his Master dyed immediately of that Wound; that he heard say the Word, Kill him: Says, that there were no more Men kill'd on Board besides his Master, only two Wounded; adds, that his dead Master was thrown over board immediately after his Death; and says that he saw the Prisoner at the Bar come on Board the *Portuguese* Ship arm'd with a Cutlace and 2 Pistols.

After this the Interpreters were directed to examine both the Negro Boys, what their new Masters bid them say of themselves when they came to *New-England*, to which the Negro Boys made answer, That their Masters bid them say they were not *Portuguese*, but *Spanish* Negro Boys.

Curia. Primer. Have you any thing further to offer to the Court, relating to the Prisoner.

Fymer, A. When we came about the Latitude of *Barmuda*, the Company ordered my Journal to be taken from me, lest I had Writ something that might do them damage, and refusing to tare out my self what Captain *Quelch* would have had me, he tore it out himself about 5 or 6 Leaves, from *October* to *February* the 20th. that they committed their Piracies. Capt. *Quelch* made a Speech, telling them, What they would say when they came on Shoar: As that we had met with some Indians who had got great Treasure out of a Wreck, of whom we had our Gold. And whereas we never had any Gold from any Indians, it being but once that any of them were on Board of us, and then we did not trade with them. It being now late, the Court Adjourn'd till four of the Clock in the afternoon.

Munday, Four of the Clock in the afternoon: *Clifford* the Second Witness was Sworn, and *Parrot* remov'd out of hearing.

Presi. You are now to acquaint Her Majesty's Commissioners of this Court of what you know relating to the Prisoner at the Bar, his being Guilty of what he is charged with in those Articles which you have heard read.

Clifford. Yes Sir, I shall, and I'll begin with the Bolting the door upon our Captain *Plowman*.

Peter Roach one of the Company kept the Door by order of *Anthony Holding*, and some others that rose up to Run away with the Vessel. The Prisoner at the Bar was then on Shore, but when he came on Board, did not object against what was done, or what they were intending to do: *Quelch* then at that time had some Command, but *Holding* was the Ringleader, and had the majority of the Crew on his side. *Fymer* and my self offered to go to the Captain, but the Sentinel that guarded the door with a Sword in his hand would not let us.

Presi. Let the Articles be read, and let the Evidence say what he can to each of them.

Art. 1. Read. *Clifford.* The first Prize that we took any thing out of, was a Fishing Boat, out of whom we took some Fish and some Salt near *Parnebuck*, and that which induced me to think it was a *Portuguese* Vessel, was because 'twas taken near their own Shoar: But I do not understand the *Portuguese* Language.

Art. 2. Read. *Clifford.* This was the second Vessel we took, a Brigantine that we carried with us during the Voyage, *Quelch* was then our Commander, and went on Board the said Vessel himself.

Art. 3. Read. *Clifford.* I remember well the taking of this Vessel by *Quelch* himself, we carried a Pilot along with us, who told us they were *Portuguese*. *John Twist*, who is since dead, was the Linguist's name. One of the Prisoners who was first taken understood a little *English* by this time, and then asked, What was the reason that we being *English*, took the *Portuguese*? And one of our Men, named *Isaac Johnson*, the Dutch-man, was Whipt for telling them we were *English*.

Art. 4. Read. *Clifford.* I remember the taking of this Vessel very well, she was taken by one of the Prize Vessels; I saw the Earthen Ware that was taken, we were all along during these Captions in sight of the Shoar, and near *Mora*.

Art. 5. Read. *Clifford.* I remember the taking of the Boat by Captain *Quelch*; the Men that we took were *Portuguese*, as we were told by our Interpreter. I do not remember any of the Vessels we had yet taken had Colours.

Art. 6. Read. *Clifford.* I saw the Bag of Money, but cannot tell how much there was of it. The Negro Boy *Cuffee* was then taken, at first he waited on the whole Ships Crew, but then was Sold at the Mast, to *Benjamin Perkins*: This Vessel was taken by a Tender, with about *Fifty Pounds*, all white money.

Art. 7. Read. *Clifford.* I remember this Vessel was taken by our Tender, near the Island of *Grandee*; I saw the Sugar brought on Board (the Brigantine *Charles*) and some of the Gold; there was only one *Dutch-man* in this Vessel, who Entred himself with us for the Voyage. But because the Company voted he should not have a full share, he threatned when he came on Shoar what he would discover; upon which they Voted him to be put on Shoar, Capt. *Quelch* being present at their Vote.

Art. 8. Read. *Clifford.* I was not in the Boat that took this Brigantine; I saw the Hundred pound weight of Gold Dust on Board the Brigantine *Charles*, which Captain *Quelch* shared among us. There might be about fifteen or sixteen Men, with two Women on Board the Brigantine that was taken, she came from *Spirito Sancto*, and was

was Bound for *Rio de Janeiro*, was taken by our own Pinace, with half a score Men, the Prisoner not in it.

Art. 9. Read Clifford. I was on Board this Ship when she was taken, and so was the Prisoner at the Bar, It was thought the Captain of her was Wounded before we Boarded her; but there were some dispute among the Men, which of them it was Killed him: Captain *Quelch* Commanded the Brigantine when we took her. We took ten or twelve Barrels and a Pipe of Beer in her, and sundry other things: I saw such an Ensign as that which was shewn in Court in the Forenoon, on Board the Ship. We took also that Negro Boy, who was in Court in the Forenoon.

Then *Clifford* was set by, and *Parrot* the third Witness for the Queen was brought in.

Pres. Parrot. You are now to give an account to Her Majesty's Commissioners of this Court, of what you know relating to the Prisoner at the Bar, his being Guilty of what he is charged with, in those Articles which you have heard read.

Parrot. I can say nothing as to the Prisoners Carriage towards Capt. *Plowman*, but the Cabin door was bolted upon him, and I believe was a contrived thing before we went off of the Land, the Prisoner at the Bar was not on Board till night. When the Captain was thrown Over-board, then he took upon him the Command, and ordered us to Sail to Sea.

Article 1. Read Parrot. We were not in sight of Land, but believe the Vessel to be Portuguese, being upon the *Brasil* Coast.

Article 2. Read Parrot. I saw the Caption of this Vessel which was a Brigantine, she was taken by the little Fishing Shallop Commanded by Capt. *Quelch*; I was afterwards on Board her, and saw the Sugar brought on Board the Brigantine *Charles*.

Article 3. Read Q. Do you remember the Caption of this Vessel?

Parrot. I remember it very well; Captain *Quelch* was on Board the Vessel that took her, we kept her two or three days.

Article 4. Read Q. What do you know concerning the taking of this Vessel?

Parrot. I remember the Vessel with Earthen Ware, it was an open Vessel, taken in sight of Land. There were Molasses in the Pots; there were Men and Women on Board her, whom we took on Board the Brigantine *Charles*. We lost the Boats Rudder, so that she could not Sail, wherefore we took her in Tow; and taking out what we had need of, we then sunk her. Captain *Quelch* and I were in the Brigantine that took this Vessel.

Article 5. Read Q. Do you remember the Caption of this Vessel?

A. Yes, I had some of the Silk taken in this Vessel, so much as would make me a pair of Breeches. We took all these Prizes, after the first Fishing Boat, in sight of the Shoar, as near I can remember.

Article 6. Read Q. As before.

Parrot. A. I remember this Caption, the Prisoner at the Bar was at it, they were Portuguese that were on Board, I was put on Board that Boat that Coffee was taken out of; and out of that Boat I took about Twenty or Thirty Pound of Portugal Money, She had Rice and Farine in her which we took out of her.

Article 7. Read Q. As before.

Parrot. I believe this was the Brigantine we took at an Anchor before the Town, I went to fetch her my self, Captain *Quelch* went over with us, we took four or five Chests of *Brasil* Sugar; all the Men had run away and left the Brigantine, only one Man who at first said he was a Dutch-Man, but afterwards we found he was a *Jutlander*.

Article 8. Read Q. As before.

Parrot. A. *Quelch* did not take this Vessel, she was taken by our Boat, but I was not in the Boat that took her. Capt. *Quelch*, the Quarter-Master and Carpenter shared the Hundred pound weight of Gold Dust among us.

Article 9. Read Q. As before.

Parrot. A. I was present at the Caption of this Ship: Capt. *Quelch* was the Commander of the Brigantine, we saw the said Ship two or three days before we took her, I saw the Colours that were in Court to day, first on Board our Brigantine. We took Beef, Sails, Shot, Powder, four Guns, and an hundred pieces of Eight and odd, and a Negro Boy, whom one *George Norton* bought. The Captain was thrown Over-board before I came on Board, he was said to be killed by *Scudamore* our Cooper.

Pres. Q. And was the Prisoner at the Bar Captain of your Brigantine, during all this

this time that you took these several Vessels you have mentioned ?

Parrot. A Yes; and a little before we came in, it was agreed that we should say, we took our Gold out of a Vessel that ran ashore about *Port Maranto*, but that the Indians were first at work upon her, *Anthony Holding* first called us up upon Deck; *Pym* told me they had torn out part of his Journal, and that they ordered every one to throw Overboard whatever *Portuguese* Prints they had.

Pres. Q. *Pym* or *Clifford*, Have you any thing further to offer ?

Clifford. A. I saw the Captain take *Pym's* Journal out of his Hands, and order it to be torn out, and all *Portuguese* Prints to be thrown Overboard: We were all upon the Deck when it was concluded we should say, we had taken the Gold out of some Wreck that the Indians had acquainted us with.

Pym. I saw the Man Whipt that told them the Brigantine belonged to *New-England*: The Captain and Quarter-Master ordered him to be Whipt, *Anthony Holding* was the Man who Whipt him. I was down below when the Agreement was made, what we should say when we came ashore, and was abused by *Peter* when I came upon Deck, because I was not present.

Mr. Newton. May it please Your Excellency, &c. We shall now (though there be no necessity for it) prove that long before, and at the time that these several Piracies, &c. were committed, Her Sacred Majesty and the King of *Portugal* were Entred into a strict Alliance, &c.

Upon this, two *London* Gazettes dated in the Months of *May* and *July*, 1703. were produced, and two Paragraphs thereof were read, *Viz.*

Whitehall, May 24. The Treaty of Alliance between the Emperor, Her Majesty, the King of *Portugal*, and the States General, which has been so long talked of, was Signed at *Lisbon* the 16th. Instant, *N. S.* and is brought hither by an Express.

Whitehall, July 14. Yesterday the Ratification of the Treaties lately concluded at *Lisbon* with the King of *Portugal* passed the Great Seal.

Pres. Gent. of the Queens Council, Have you now done on the Queens part ?

Queens Council. Yes Sir, We have gone through the course of the Queens Evidence against the Prisoner at the Bar.

Pres. Capt. Quelch, This Court is now ready to hear what you have to offer for your self.

Quelch. My Council informs me, that he hath sundry matters of Law to offer to Your Excellency on my behalf.

Pres. Mr. Meinzie, If you have any matters of Law to offer in behalf of the Prisoner at the Bar, we would hear it.

Mr. Meinzie. I have several matters of Law to offer in behalf of the Prisoner, &c. but before I mention them, I pray that I may not be thought any wise to justify or extenuate the horrible Crimes that are charged upon the Prisoner; for they are such, that all the World must needs detest and abhor: but as 'tis equal Justice to acquit the Innocent, as to condemn the Guilty, so if the Evidence which has been produced against the Prisoner at the Bar, don't amount to make him guilty of the several Articles he stands charged with, this Court must needs acquit him.

The first objection I make to the Evidence, is what was last produced, I mean the Gazettes.

Mr. Newton. The Gazette is Publish'd by Authority, and has been often allowed as good Evidence.

Pres. The stress of this matter does not lye upon the Alliance: Suppose they were not in Alliance with the Crown of *England*, yet if there was no War between the two Crowns, the Prisoner at the Bar, with his Company had been guilty of Piracy. *Kidd* was Hang'd for Robbing the Great *Mogul*.

Mr. Meinzie. But (May it please Your Excellency) suppose we should bring proof that the Gold Dust Imported in the Brigantine *Charles*, and now shewn in Court, to be *Spanish* Gold Dust.

Pres. Can you prove it ?

Meinzie. We have a Goldsmith here, whom I desire may be Sworn.

David Jess Sworn, Says, That he has seen a great deal of the Gold Dust that was brought in by these Pyrates, but hath not so much skill as to tell whether it be *Spanish* or *Portuguese* Dust, and believes no body else can distinguish one from the other.

Pres. You attempt a very vain thing, for had the Dust been dug in *Mexico*, yet if
our

our Friends have it in keeping, it is Piracy to take it from them. Besides, what answer can you give to all the Coin'd Gold shewn in Court, with the other things, which appear plainly to be *Portuguese*.

Mr. *Meinzies*. The next thing in point of Law that I would offer upon the Evidence against Capt. *Quelch* is, that the several Witnesses differ very much as to the places where the several Vessels were taken, and as to the number of persons that were on board those Vessels.

Pres. That difference is very immaterial, for it matters not what number of *Portuguese* there were on board, so there were any; and as to difference of place or Latitude, two Artists may differ in their Observations at the same time; and you have heard the reason why one of the Witnesses cannot be so positive as to his Latitudes, viz. because Captain *Quelch* cut out his Journal, but he and all the rest are positive it was done upon the Coast of *Brasil*, in their very Harbour, and in sight of their Forts and Castles.

Mr. *Meinzies*. 'Tis plain, That none of the Witnesses understand the *Portuguese* Language, and it ought to be very positive Evidence to take away a Man's Life.

Pres. I believe Her Majesties Commissioners now present will think they have very positive proof, however they are the Judges of that.

Mr. *Meinzies*. The next thing in point of Law, that I would offer, in behalf of Capt. *Quelch*, is, That whereas in the last Article he is charged with, is, for the Murder of the *Portuguese* Captain; it is well known he was not the Man that did the Fact: Now, by the Civil Law, only he that gives the stroke, wound, or the like, is the Murderer: So says *Molloy* in his Chapter of Piracy.

Mr. *Newton*. But the same book says, That if the Common Law have Jurisdiction of the cause, all that are present, and assisting at such a Murder are principals. Now the Statute 28. *Henry VIII.* makes all Piracies, Robberies and Murders upon the high Sea, Tryable according to the Rules of the Common Law, as if they had been committed upon the Land.

Mr. *Meinzies*. (May it please your Excellency) I have yet one thing further to offer against the Queens Witnesses in this matter. That is, That they are not Competent Witnesses, having not had Her Majesty's pardon.

Mr. *Newton*. It has never been thought convenient to give Approvers their Pardon, until they have actually convicted their accomplices, lest after their having their Pardon they may refuse it; altho' after they have convicted those they approve, their Pardon is *ex Debito Justitiæ*. This is the Opinion of my Lord *Coke*, in his Pleas of the Crown, and so has the practice been since.

Mr. *Meinzies*. I have but one thing more, may it please this Honourable Court, to offer in behalf of Capt. *Quelch*, That is upon the late Act of Parliament made in the late Reign, which appoints this Honourable Court; for the Words of it, are, *That the proceedings of this Court, in Examining, Trying and Condemning Pirates, shall be according to the Civil Law, and the Methods and Rules of the Admiralty.*

Now by the Civil Law, which is founded upon the reason and custom of Nations, no accomplice can be a Witness, being equally guilty with those he accuses. So says *Wiseman*, Doctor of the Civil Laws, in his Treatise of the Civil Law, Chap. 8. page 73. And in the same Book touching Examining Witnesses upon Oath, page 114. & 119. And the same Author observes, That among the *Romans*, when a Man was criminally accused, they were so tender of the Lives and Safety of their People, That to convict a Man by proof, was no easy, but a very difficult thing, &c. The allowing these Witnesses will be inconsistent with the Act of Parliament it self, whereby the Persons accused have not only the benefit of cross Examining the Witnesses, but also of bringing Evidence for their own Vindication, and it may be thought as proper to bring some of their own Company for their clearing, as the other Evidences for the accusing them. As to Witnesses in Piracy, see *Coke's Institutes*, part 3d. page 24, 5. As to the Admirals power of Jurisdiction, *Coke's Institutes*, part 4. page 134. and proceedings on Piracy, p. 147, 154. and part 3d, page 119, 192.

Queen's Advocate. What Mr. *Meinzies* says (May it please your Excellency) of the Civil Law, is so far certain, That the Witnesses in cases of Piracy, by the methods of the Civil Law, must be such as are indifferent, and saw the Fact committed, but no ways concerned in the doing of it; but this method of trying of Pirates, the Statute of

Henry VIII. complains of, as too strict, and tending rather to let Pirates escape, than be brought to Justice; and does therefore perfectly reject it, and does Enact, That for the future, all Piracies, &c. committed upon the high Seas, shall be tryed according to the Course of the Common Law, as if they had been committed upon the Land.

Now it is very well known, That by the Common Law accomplices are many times admitted to be Approvers against those that were Partners with them in their Crimes, and indeed in many Cases, there happens to be no other way to bring Criminals to their just Punishment, but by singling out some of their Company, that may be the least guilty, and make use of them to convict the rest.

Mr. Alleinies. I don't take my self to be throughly answer'd by Mr. Advocate, as to what I offer'd in the last place, for I take the case of Pirates, that may be try'd in *England*, upon the Statute of *Henry VIII.* to differ very much from the case of Pirates, that are tryed in the Plantations, by vertue of the New Statute; for admit that in the former case accomplices or approvers may be allowed as Witnesses: Since Pirates that are tryed upon that Statute, are allowed a Jury, yet in the latter case, those that are tryed for Piracy in the Plantations, being deprived of the benefit of a Jury, the Statute seems to design an equivalent to a Jury, by directing the Commissioners of such Courts, to proceed according to the Civil Law, and method of the Court of Admiralty.

Queens Advocate. As to the Method of the Court of Admiralty, 'Tis now about an Hundred and Three score Years since the Statute of *Henry VIII.* was made; a term long enough to make a Method of any Court, for ever since that time hath the Court of Admiralty proceeded in cases of Piracy, according to the Rules of the Common Law; and then as to that other part of the New Statute, relating to Piracy, That says, this Court is to proceed according to the Civil Law. With submission, We understand it to be of the summary way of proceeding by the Commissioners, and depriving the Prisoner of a Jury; for 'tis most certain that the late Statute against Piracy, doth strengthen and establish the Statute of *Henry VIII.* And it would be very odd to suppose that what the first Act of Parliament in these cases had rejected and condemn'd, the method of the civil Law in the tryal of Pirates, &c. The second Act of Parliament should be reconcil'd to that Method, to restore and set it up in the Plantations, especially when the Title of the New Act, is an Act, *For the more effectual Suppression of Piracy, &c.*

Pres. Capt. Quelch. If you have any thing further to offer for your self, or if you would cross Examine the Witnesses, the Court will hear you?

Capt. Quelch. I desire *Pymmer* may be ask'd, Whether there was any Bolt upon the Captain's Cabbin Door, when we first sail'd?

Answ. Pymmer. It was fastned with a Marlin Spike.

Capt. Quelch. Was I then on board?

Pres. The Witnesses have answered as to that already.

Capt. Quelch. I desire the Witnesses may be ask't Whether they know the Gold Dust, to be *Portuguese* Dust?

Pres. This is not material *Capt. Quelch.*

Capt. Quelch. I desire *Pymmer* may be ask'd, How he knows the first Prize was taken the Fifteenth of *November*?

Pymmer. I say it was on, or about that Day, I sat down the very Day in my Journal, but 'twas torn out, I cannot now swear to a Day.

Capt. Quelch. How many Tun was the second Vessel that was taken?

Pres. Capt. Quelch, This is not cross examining the Witness, but rather examining him over again; if you would say any thing to the purpose, You should acquaint this Court, where you took those Quantities of Gold Dust, and Coyned Gold, those Negroes, &c. that have been shown to this Court; if they were taken from the *French* or *Spaniards*, let us see some of them here, or some Evidence of their being so taken?

Pres. Queens Advocate. We are now gone through the course of the Queens Evidence against *Capt. John Quelch*, the Prisoner at the Bar, and besides what his accomplices have declared against him, the circumstances of this matter are so many, as put it beyond all Question, but that the Prisoner at the Bar is guilty of what he stands charged with: for upon his Tryal, we have seen the King of *Portugals* Ensign Flying, his Coyn Currant, his Servants, I mean his Negroes waiting, his Merchandize exposed to Publick

Publick view, infomuch one would think that we were in *Portugal* it self: Upon the whole Matter we must leave it to Her Majesties Honourable Commissioners of this Court to Consider, whether Capt. *John Quelch* is not Guilty of the several Piracies, Robberies and Murder that he stands charged withal.

Ordered, That the Court be cleared immediately.

After an Hours Consideration, the Court was opened again.

Pref. Capt. *John Quelch*, 'tis now Six Days since this Court first sat, by Her Majesties Special Command to my self, and these Gentlemen Commissioners, before whom you have been Indicted upon, or charged with several Articles of Piracies, Robberies and Murder. And you have been heard thereupon: This Court hath weighed and considered the several Evidences that have been produc'd on Her Majesties Behalf against you, and your own Allegations for you; and upon the whole have found and adjudge you Guilty of the several Articles of Piracy, Robbery and Murder, where-with you are charged, and have agreed that Sentence should be Pronounced against you for the same accordingly.

Regr. Make Proclamation of Silence.

Cryer. All manner of Persons are Commanded to keep Silence, while Judgment is giving, upon Pain of Imprisonment.

And then Sentence was Pronounced by the *President* of the Court, as the Law directs, in Cases of Piracy, &c.

Then the Court adjourned till Nine a Clock the next Morning.

Tuesday 20th of June 1704. 10. h. A. M.

The Court being opened and Proclamation made, Three Negroes belonging to Captain *Quelch's* Company, were set to the Bar, *Cesar-Pompey*, *Charles* and *Mingo*, and Arraign'd, upon the Articles of Piracy, &c. aforesaid (*Mutatis Mutandis*) and severally pleaded not Guilty.

Queens Advocate. May it please your Excellency, and the rest of the Honourable Commissioners of this Court, The Three Prisoners now at the Bar are of a different Complexion, 'tis true, from the rest that have been Arraigned upon these Articles, but it is very well known that the First and most Famous Pirates that have been in the World, were of their Colour; and Negroes, though Slaves, are as capable of taking away the Lives and Estates of Mankind, as any Freemen in the World; and if we prove that these Fellows have been as Active in all this Matter, as the rest of the Company, we doubt not, but you will think and adjudge them equally Guilty with the others.

Pref. Pimer, look upon the Prisoners now at the Bar, and acquaint the Court, Whether they were on Board the Briganteen *Charles*, during your late Voyage, and how they behaved themselves while they were on Board.

Pimer (looking on the Prisoners.) Those Three Negroes were on Board during the whole Voyage, but were not Active, nor did they any thing but as they were Commanded: *Cesar-Pompey*, and *Charles* were the Cooks of the Briganteen, and Sounded the Trumpet, when they were Commanded, but handled no Arms; neither did *Mingo*.

Clifford and *Parrot* being Examined, affirm'd the same thing.

Pimer farther added, That he knew *Mingo* to have been Capt. *Plowman's* Slave, and that he brought him from *Guinea*.

Mr. John Colman informed the Court also, That the other Two Negroes, *Cesar-Pompey* and *Charles*, were his Brother Col. *Hobbes's* Slaves; That they did not run away from their Master, but were forcibly carry'd away by Capt. *Quelch* and Company.

Upon this the Court being cleared, in less than half an Hour was opened again, and the Three Negroes aforesaid brought in.

Pref. Cesar-Pompey, Charles and Mingo, You have been Charged with several Articles of Piracy, &c. to which you have pleaded Not Guilty; This Court have considered of the Matter, and declare you to be Not Guilty.

Whereupon they were ordered upon their Knees, &c.

After this *Mr. Meinzie* moved for some farther time for the rest of the Prisoners: and then the Court Adjourn'd till Three a Clock in the Afternoon.

Three P. M.

The Court was opened and Proclamation made, then *Lambert, Wilde, Scudamore,*
E *Roach,*

Roach, Perkins, and James, were set to the Bar, and after some little time spent, *John Lambert* and *Charles James*, desired that they two might be Tried by themselves; upon which the Court ordered the rest to be taken from the Bar; and then the Court proceeded to Examine the Witnesses on behalf of the Queen against the Prisoners.

Pres. Pimer. What do you know as to *Lambert's* being concerned in confining Capt. *Plowman*, and altering the Voyage?

Pimer. I can't say that either he, or *James* were concerned in bolting the Cabbindoor, but they were both on Board when we came to Sail; and though they declared they were unwilling to go to the *Southward*, yet after Capt. *Plowman's* Death, there was a Consultation held, and both *Lambert* and *James* were at it; and I know nothing to the contrary, but they consented with the Majority.

Court. Please to let the Articles be read to the Witnesses, and then ask how far *Lambert* and *James* were concerned in all, or any of them.

Artic. 1. Read. Witnesses. *Lambert* and *James* were on Board when we took that Vessel, and so at the Second and Third, Fourth and Fifth.

Pres. And as active as any of the rest?

Witnesses. Yes.

Artic. 6. Read. Witnesses. They were both on Board our Briganteen when this was done, and assisted at the Seventh and Eighth Captions.

Artic. 9. Read. Witnesses. *Lambert* was on Board the Tender above a Mile off at that time, but *James* was one that Boarded the Ship.

Pres. *Lambert* and *James*, would you ask the Witnesses any Questions?

Lambert. I was sick down in the Gun room when they bolted the Door upon the Captain, and never gave my Consent to go to the *Southward*. What I did I was forced to.

Pres. Pimer. Did you ever hear *Lambert* protest against any of these Piratical Actions, or did he desire to be set on Shoar?

Pimer. He did desire to be set on Shoar, but it was before the Captain went from *Nantasket*. I never heard any of them manifest their dislike as to our going to *Brasil*, but were as forward as the rest were.

Pres. Pimer. Do you know whether *Lambert* and *James* had their Share of the Treasure?

Witnesses. They had each of them their Shares.

Pres. What say you, *James*?

James. I was constrained against my Will to go to Sea, and was deluded by false Pretences.

Pres. Pimer. What say you as to *James*?

Pimer. I cannot say that he said any thing of what he pretends he said, but that he was unwilling to Pilot the Ship, which I judged was because he was averse to the Voyage.

Pres. Did you hear *Lambert* advise the Captain to go off from the Coast of *Brasil*, against some known Enemy?

Witnesses. No, we never heard him give any such Advice.

Pimer. I have heard him several times declare himself against the Voyage, but never express himself sorrowful for, or protest against any of the Piracies, nor *James* neither.

Pres. You have brought in a very considerable Treasure with you, whereof each of you have had your Shares; Whence had you it? Where are the *French* or *Spaniards* you took it from?

James. It was the Commander did it; and we were not on Board the Vessel that took the Dust Gold; the reason we accepted of our Shares was, because otherwise they would either have killed us, or set us upon some desolate Island, where we should have been starved.

Lambert. I was only at the taking of Two of the Vessels, and you may be sure I would never have come home in the Vessel if I had thought I had done any thing amiss, or that I should have been Arraigned for't.

The Prisoners having nothing farther to offer, the Court was ordered to be cleared, and in some small time after opened again, and the Prisoners set to the Bar.

Pres. John Lambert and *Charles James*, you have here been Arraigned upon several Articles

Articles of Piracy, &c. Committed by you (with others) upon the Subjects of Her Majesties good Allies, &c. To which you have pleaded not Guilty: You have been heard thereupon what you had to say for your selves: This Court having considered the Evidence for the Queen against you, and your own Allegations for you, do adjudge each of you Guilty of the several Articles of Piracy, &c. What have you to say why Sentence of Death should not be Pronounced against you?

Answ. We must leave it to God and your Honours: We are as Innocent as the Child unborn, of the things we are charged withal.

Pref. Harken to the Sentence of the Court against you.

Then Sentence was Pronounced by the *President* of the Court as the Law directs, in Cases of Piracy, &c.

After this *Benjamin Perkins*, *William Wilde*, *Christopher Scudamore*, and *Peter Roach* were set to the Bar.

Ordered, That *Scudamore* be Tried by himself, and the rest taken from the Bar.

The several Articles being read to the Witnesses, they all swore that *Scudamore* was with them all the Voyage, that he was very active in every thing, and that he had his share of the Gold.

Queens Advocate, May it please your Excellency, we shall farther prove against the Prisoner at the Bar, That he was the only Man who gave the Mortal Wound to the Captain of the *Portuguese Ship*.

Pref. Pimer. What do you know as to that?

Answ. There was a Controversie on Board our Briganteen concerning who it was that kill'd the Captain of the *Portuguese Ship*, *Scudamore* saying it was he, and another said it was he that did it.

Pref. set up the Negro Boy who was taken in that Ship.

The Negro Boy being set up, was bid to look upon the Prisoner, and say, whether it was he that kill'd his Master.

And the Interpreters reported to the Court, that the Negro Boy said, That was the Man who kill'd his Master, and that he kill'd him with a Petard, that his Master fell down immediately, and did not speak a Word.

Pref. What say you, *Scudamore*?

Scudamore. I did not kill the Captain of the *Portuguese Ship*.

Pref. Where is your Gold?

Scudamore. I can't tell. What I said upon my first Examination about it is false.

Pref. Have you any thing farther to say?

Scudamore. No.

After this a Petition was given into Court Signed by several of the Prisoners, viz. *William Wilde*, *John Dorothy*, *Denis Carter*, *Peter Roach*, *Francis King*, *John Pitman*, *Richard Lawrence*, *Benjamin Perkins*, *Erasmus Peterson*, *John Carter*, *Nicholas Richardson*, *John King*, *James Austin*, *William Jones*, and *Charles King*: Praying that they might withdraw their several Pleas of Not Guilty, and be admitted to confess and plead Guilty hoping thereupon for the Queens Mercy, &c.

Upon which they were each of them askt whether they set their Hands to that Petition? And they all severally own'd they did.

Pref. You who have here subscribed this Petition, must be told, That your Commander, and some others of your Company have had their Tryals, and are found Guilty: We don't take your pleading Guilty now to be any Submission, nor will it of it self entitle you to Mercy. This Court can make no Bargain with you. If any of you can be distinguished, as being forced away, professing against the Voyage, Sickness, or the like, this Court will Consider of it, so far as is proper for them.

Mr. Register, you must ask each of the Prisoners one by one, Whether they are Guilty or not Guilty, of what they are charged with.

Register. How say you, *Richard Lawrence*? Are you Guilty or not Guilty?

Richard Lawrence. Guilty.

So said *Erasmus Peterson*, *John Carter*, *Francis King*, *Peter Roach*. &c. and the rest of the Petitioners.

After this *John Miller* was set to the Bar.

And the Queens Witnesses being examined about *John Miller*, made Oath, That he was on Board the Briganteen *Charles* during the Voyage, and did not protest against going

going upon the Coast of *Brazil*; that he was in Health, and Serviceable at the time of every Caption as the rest were, and had his Share of the Gold, &c. that was taken.

Miller Saying he was sick some part of the Voyage.

Witnesses. He was so, but was well again before we made our first Caption. (Article 4th read.) He was at this Caption well in Health, and consenting to it, so at the 5th and 6th Articles, and at the taking of the Prize in the 7th Article. (Article 8th read.) He was then on Board the Tender that took the Gold Vessel. (9th Article read.) He Boarded that Ship with Sword and Pistol.

Pres. What have you to say for your self? You have heard what has been proved against you.

Miller. I was at the taking of the Ship and a Bark, but did not know what they were, for they shew'd no Colours.

Pres. *Pimer*, Did you ever hear any of your Company say as if *Miller* was one of *Avery's* Crew?

Pimer. I heard some of them say they heard him say so himself, so said *Clifford*.

Miller. I was none of *Avery's* Company.

Pres. Set *John Templeton* to the Bar, which was done, and the Queens Witnesses being Sworn, Deposed, That *John Templeton* was on Board the Briganteen all their late Voyage, and that he did sometimes bear Arms, but being not above Fifteen Years of Age, they allowed him but half a Share, which his Master was also to have; that he was for Two Months together Cook on Board the Tender, but being but a Boy, he had no Vote with the rest of the Company, but was ordered as every one pleased.

Mr. Henry Franklyn being Sworn, Deposeth, That the Prisoner at the Bar was his Servant, and that he put him on Board the Briganteen *Charles* as such, upon Captain *Plowman's* Request: That he saw his Boy the Sunday Evening after the Pirates came in, and that his Share of Gold was never in his own keeping, for that the Company would not trust him with it, but he received it for him.

Pres. *Templeton*, What have you to say?

Templeton. I have nothing to say, but that my Master sent me out, and I knew not whither we were going.

And after this *William Whiting* was set to the Bar, and Charged with the same Articles of Piracy, &c. who thereupon pleaded Not Guilty.

And *Pimer* and the rest of the Witnesses being Examined concerning him, informed the Court, That from the First time of their coming upon the Coast of *Brazil* unto their coming home, *Whiting* was sick, and never bore Arms, being utterly incapable of doing any thing.

Pres. Had he any Share?

Witnesses. He had Sixteen Ounces allowed him by the Company, but they told him it was not for his Deserts, but out of their Generosity that they gave it him.

Pres. Did he express any dissatisfaction at what was done?

Witnesses. No, not that I heard, but he was taken sick on the beginning of *November*, and came very sick ashoar.

S. Sewall Esq; *Whiting*, upon his Examination, told me, that he had been acquainted with Captain *Plowman* at *New York*, and that it was out of Respect that he had for him that he came hither, and went the Voyage.

Mr. William Clark Sworn.

Deposed, That Captain *Plowman* sent for *Mr. Colman* and himself, and recommended the Prisoner to them as a Person fit to be Clerk or Secretary on Board the Ship, and to take an Account of all their Affairs, and that Capt. *Plowman's* Letters to them were written by the Prisoner; and when he came ashoar, he was in a very low Condition, but said when he was able he would do them all the Service he could.

Pimer. I know of his writing Letters from Captain *Plowman*.

Pres. Would you say any thing your self. *Whiting*?

Whiting. I never was in any Action, being sick all the while we were on the Coast of *Brazil*, and did not discover their Piracy when I came ashoar, because I was then very sick and like to die.

The Court was ordered to be cleared, and then Adjourn'd to Nine a Clock next Morning.

Wed.

Wednesday, the 21st of June, 9 A. M.

The Court being opened, and Proclamation made, *John Templeton*, and *William Whiting* were set to the Bar.

Pres. John Templeton, This Court has considered your Case, and have been very Indulgent to you in regard of your Youth, and have adjudged you to be Not Guilty.

And you also *William Whiting*, the Court have considered of your Case, and have adjudged you also to be Not Guilty. Upon which each of them upon their Knees thank the Court, &c.

After which *Christopher Scudamore* and *John Miller* were set to the Bar.

Pres. Scudamore and *Miller*, upon hearing the Queens Evidence against you, and your own Allegations for your selves, this Court doth adjudge you both to be Guilty of what you have been Charg'd with. What have you to say why Sentence of Death should not pass against you?

Scudamore. I had no Hand in altering the Voyage, nor killing the *Portuguese* Captain.

Miller. I was never Active after the Voyage was alter'd.

Pres. Attend to the Sentence of this Court against you.

Then Sentence was Pronounced by the *President* of the Court, as the Law directs, in Cases of Piracy, &c. against the said *Scudamore* and *Miller*.

Ordered, That all the rest of the Prisoners, that Plead Guilty, be brought to the Bar.

Pres. Set Seven of them to the Bar.

Then *William Wilde*, *John Dorothy*, *Denis Carter*, *Peter Roach*, *Francis King*, *John Pitman*, and *Richard Lawrence* were set to the Bar.

Pres. You and each of you have been Arraigned upon several Articles of Piracy, &c. to which you have severally Plead Guilty. What have you to say why Sentence of Death should not pass upon you?

Answ. Nothing.

Pres. Then attend to the Sentence.

Then Sentence was Pronounced by the *President* of the Court as the Law directs, in Cases of Piracy, &c. against the said Seven Persons last named.

Pres. Set the rest to the Bar.

Benjamin Perkins, *Erasmus Peterson*, *John Carter*, *Nicholas Richardson*, *John King*, *James Austin*, *William Jones*, and *Charles King*, were set to the Bar.

Pres. You and every of you have been Arraign'd upon several Articles of Piracy, Robbery, and Murder, unto which you and each of you did Plead Guilty. What have you to say why Sentence of Death should not pass against you for the same?

Answ. We leave our selves to God Almighty.

Pres. Attend then to the Sentence.

Then Sentence was Pronounced by the *President* of the Court as the Law directs, in Cases of Piracy, &c. against the Eight Persons last named.

And then the Prisoners were all remanded to Prison, and the Officer charged to take great care of them.

Note, On Friday, June 30. 1704. *John Quelch*, *John Lambert*, *Christopher Scudamore*, *John Miller*, *Erasmus Peterson*, and *Peter Roach*, were Executed in *Charles-River*; between *Broughton's Ware-house*, and the Point.

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APPENDIX.

Copy of Capt. Plowman's Commission.

Joseph Dudley, Esq; Captain General and Governour in Chief, in and over Her Majesties Provinces of the Massachusetts-Bay, and New-Hampshire in New-England in America, and Vice-Admiral of the same. To Capt. Daniel Plowman, Commander of the Briganteen Charles of Boston, Greeting.

WHEREAS Her Sacred Majesty ANNE by the Grace of GOD, of England, Scotland, France and Ireland, QUEEN, Defender of the Faith, &c. Hath an Open and Declared War against France and Spain, their Vassals and Subjects. And **so** much as you have made Application unto Me for Licence to Arm, Furnish and Equip the said Briganteen in Warlike manner, against Her Majesties said Enemies, I do accordingly Permit and Allow the same; And, Reposing special Trust and Confidence in your Loyalty, Courage and good Conduct, Do by these Presents, by Virtue of the Powers and Authorities contained in Her Majesties Royal Commission to Me granted, Impower and Commissionate you the said Daniel Plowman, to be Captain or Commander of the said Briganteen Charles, Burthen Eighty Tuns or thereabouts: Hereby Authorizing you in and with the said Briganteen and Company to her belonging, to War, Fight, Take, Kill, Suppress and Destroy, any Pirates, Privateers, or other the Subjects and Vassals of France, or Spain, the Declared Enemies of the Crown of England, in what Place soever you shall happen to meet them; Their Ships, Vessels and Goods, to take and make Prize of. And your said Briganteens Company are Commanded to Obey you as their Captain: And your self in the Execution of this Commission, to Observe and Follow the Orders and Instructions herewith given you. And I do hereby Request all Governors and Commanders in Chief, of any of Her Majesties Territories, Islands, Provinces or Plantations, where the said Captain or Commander shall arrive with his said Vessel and Men: And all Admirals, Vice-Admirals and Commanders of Her Majesties Ships of War, and others, that may happen to meet him at Sea; Also all Officers and Subjects of the Friends or Allies of Her said Sacred Majesty, to permit him the said Captain or Commander with his said Vessel, Men, and the Prizes that he may have taken, freely and quietly to pass and repass, without giving or suffering him to receive any Trouble or Hindrance, but on the contrary all Succour and Assistance needful. And this Commission is to continue in Force for the Space of Six Months next ensuing (if the War so long last) and not afterwards. *Given under my Hand and Seal at Arms at Boston the Thirteenth Day of July: In the Second Year of Her said Majesties Reign, Annoque Domini, 1703.*

By His Excellencies Command,

Isaac Addington, Secr.

*A true Copy as appears of Record, Examined per Isaac Addington, Secr.
Read in Court per John Valentine, Register.*

Copy of Capt. Plowman's Instructions.

Province of the Massachusetts-Bay in New-England.

By His Excellency Joseph Dudley, Esq; Captain-General and Governour in Chief, &c.

I NSTRUCTIONS to be Observed by Capt. Daniel Plowman, Commander of the Briganteen Charles of Boston, In Pursuance of the Commission herewith given him.

First, You are to keep such good Orders among your said Briganteen's Company, that Swearing, Drunkenness and Prophaneness be avoided, or duly Punished; And that GOD be duly Worshipped.

2dly, You are upon all Occasions to Endeavour the maintaining of Her Majesties Honour, and to give Protection to Her Subjects, by endeavouring to secure them in their Trade, and in no wise to hurt or injure any of Her Majesties Subjects, Friends or Allies.

3dly, You

3dly. You are to take, seize, sink, or destroy any of the Ships, Vessels or Goods belonging to *France* or *Spain*, their Vassals or Subjects, the Declared Enemies of the Crown of *England*. And all such Ships and Vessels with their Lading, Goods, and Merchandizes, which you shall happen to seize or take, you are to carry or send into some Port or Ports within Her Majesties Kingdom or Dominions, to be proceeded against and adjudged: And if near this Coast, then to bring or send them to *Boston*, your Commission Port.

4thly. You are to take effectual Care, That no Money, Goods, Merchandizes, or what else, shall be taken by you in any Ship, Vessel, or otherwise, be Imbezelled, Purloined, Concealed, or Conveyed away. And that Bulk be not broken until the same be first adjudged to be Lawful Prize: And Order given for the landing and securing thereof, as by Law is directed. And likewise you are carefully to preserve all Books, Papers, Letters and Writings which shall be found in any Ship or Vessel to be by you taken, to the intent a more clear Evidence and Discovery may be made to what Persons such Ship or Vessel and her Lading did belong.

5thly. You are to take care, That no Person or Persons taken or surprized by you in any Ship or Vessel as aforesaid, though known to be of the Enemies side, be in cold Blood killed, maimed, or by Torture or Cruelty inhumanly treated contrary to the Common Usage or Just Permission of War.

5thly. You are to keep a fair Journal of all your Proceedings, That so you may be the better enabled to give a Copy thereof when you shall be thereunto duly required.

6thly. You may not at any time wear on Board your said Briganteen, by Virtue of the said Commission, any other Jack than that Ordered by Her Majesties Royal Proclamation, of the Eighteenth of *December* 1702. to be worn by such Ships as have Commission of Mart or Reprizal; and upon meeting with any of Her Majesties Ships of War, you are to pay all Customary Respect unto them, according to the Laws and Orders of the Sea.

8thly. You may not enter or retain on Board your said Briganteen any Mens Sons under Age, or Servants, contrary to the Law of this Province: And before you depart with your said Briganteen from the same, you are to deliver into the Secretaries Office a List by you signed, of the Names of the Company belonging to your said Briganteen with the Place of their Respective Dwellings, or Abroad, as near as you can learn; and such of them as are Inhabitants, or belonging to this Province, you are to bring back with you to the same, or use your best Endeavours so to do, not willingly leaving any of them behind in other Parts.

9thly. You are to take care, That the Prisoners which you shall take in any Prize Ship or Vessel, or so many of them as you may be able to keep under Command (especially the Officers or more Principal of them) be brought or sent into your Commission Port, or where else within Her Majesties Dominions you send your Prizes: To the intent there may be the more full Evidences for Condemning the same, and also an advantage for the Exchange of Prisoners.

Lastly. You are carefully to observe and keep all the foregoing Articles and Instructions, and not to make any breach thereof, or of Her Majesties Laws, respecting Letters of Reprisal, and Prize Ships and Goods; and to see that the full and just Parts and Shares of all such Vessels and Goods as shall be taken and seized by you, by Law accruing unto Her Majesty, and the Lord High Admiral, be duly and truly answered and paid.

Given under my Hand at Boston, the Thirteenth Day of July, in the Second Year of Her Majesties Reign, Annoque Domini, 1603.

Copy of the Instructions given unto me

Daniel Plowman.

Read in Court per John Valentine, Register.

J. DUDLEY.

Copy Examined, per Isaac Addington, Secr.

APPENDIX.

Copy of Capt. Plowman's Commission.

Joseph Dudley, Esq; *Captain General and Governour in Chief, in and over Her Majesties Provinces of the Massachusetts-Bay, and New-Hampshire in New-England in America, and Vice-Admiral of the same. To Capt. Daniel Plowman, Commander of the Briganteen Charles of Boston, Greeting.*

WHEREAS Her Sacred Majesty ANNE by the Grace of GOD, of England, Scotland, France and Ireland, QUEEN, Defender of the Faith, &c. Hath an Open and Declared War against France and Spain, their Vassals and Subjects. And **so** much as you have made Application unto Me for Licence to Arm, Furnish and Equip the said Briganteen in Warlike manner, against Her Majesties said Enemies, I do accordingly Permit and Allow the same; And, Reposing special Trust and Confidence in your Loyalty, Courage and good Conduct, Do by these Presents, by Virtue of the Powers and Authorities contained in Her Majesties Royal Commission to Me granted, Impower and Commissionate you the said Daniel Plowman, to be Captain or Commander of the said Briganteen Charles, Burthen Eighty Tuns or thereabouts: Hereby Authorizing you in and with the said Briganteen and Company to her belonging, to War, Fight, Take, Kill, Suppress and Destroy, any Pirates, Privateers, or other the Subjects and Vassals of France, or Spain, the Declared Enemies of the Crown of England, in what Place soever you shall happen to meet them; Their Ships, Vessels and Goods, to take and make Prize of. And your said Briganteens Company are Commanded to Obey you as their Captain: And your self in the Execution of this Commission, to Observe and Follow the Orders and Instructions herewith given you. And I do hereby Request all Governors and Commanders in Chief, of any of Her Majesties Territories, Islands, Provinces or Plantations, where the said Captain or Commander shall arrive with his said Vessel and Men: And all Admirals, Vice-Admirals and Commanders of Her Majesties Ships of War, and others, that may happen to meet him at Sea; Also all Officers and Subjects of the Friends or Allies of Her said Sacred Majesty, to permit him the said Captain or Commander with his said Vessel, Men, and the Prizes that he may have taken, freely and quietly to pass and repass, without giving or suffering him to receive any Trouble or Hindrance, but on the contrary all Succour and Assistance needful. And this Commission is to continue in Force for the Space of Six Months next ensuing (if the War so long last) and not afterwards. *Given under my Hand and Seal at Arms at Boston the Thirteenth Day of July: In the Second Year of Her said Majesties Reign, Annoque Domini, 1703.*

By His Excellencies Command,

Isaac Addington, Secr.

A true Copy as appears of Record, Examined per Isaac Addington, Secr.
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By His Excellency Joseph Dudley, Esq; Captain-General and Governour in Chief, &c.

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2dly, You are upon all Occasions to Endeavour the maintaining of Her Majesties Honour, and to give Protection to Her Subjects, by endeavouring to secure them in their Trade, and in no wise to hurt or injure any of Her Majesties Subjects, Friends or Allies.

3dly, You

3dly. You are to take, seize, sink, or destroy any of the Ships, Vessels or Goods belonging to *France* or *Spain*, their Vassals or Subjects, the Declared Enemies of the Crown of *England*. And all such Ships and Vessels with their Lading, Goods, and Merchandizes, which you shall happen to seize or take, you are to carry or send into some Port or Ports within Her Majesties Kingdom or Dominions, to be proceeded against and adjudged : And if near this Coast, then to bring or send them to *Boston*, your Commission Port.

4thly. You are to take effectual Care, That no Money, Goods, Merchandizes, or what else, shall be taken by you in any Ship, Vessel, or otherwise, be Imbezelled, Purloined, Concealed, or Conveyed away. And that Bulk be not broken until the same be first adjudged to be Lawful Prize : And Order given for the landing and securing thereof, as by Law is directed. And likewise you are carefully to preserve all Books, Papers, Letters and Writings which shall be found in any Ship or Vessel to be by you taken, to the intent a more clear Evidence and Discovery may be made to what Persons such Ship or Vessel and her Lading did belong.

5thly. You are to take care, That no Person or Persons taken or surprized by you in any Ship or Vessel as aforesaid, though known to be of the Enemies side, be in cold Blood killed, maimed, or by Torture or Cruelty inhumanly treated contrary to the Common Usage or Just Permission of War.

5thly. You are to keep a fair Journal of all your Proceedings, That so you may be the better enabled to give a Copy thereof when you shall be thereunto duly required.

6thly. You may not at any time wear on Board your said Briganteen, by Virtue of the said Commission, any other Jack than that Ordered by Her Majesties Royal Proclamation, of the Eighteenth of *December* 1702. to be worn by such Ships as have Commission of Mart or Reprizal; and upon meeting with any of Her Majesties Ships of War, you are to pay all Customary Respect unto them, according to the Laws and Orders of the Sea.

8thly. You may not enter or retain on Board your said Briganteen any Mens Sons under Age, or Servants, contrary to the Law of this Province: And before you depart with your said Briganteen from the same, you are to deliver into the Secretaries Office a List by you signed, of the Names of the Company belonging to your said Briganteen with the Place of their Respective Dwellings, or Abroad, as near as you can learn; and such of them as are Inhabitants, or belonging to this Province, you are to bring back with you to the same, or use your best Endeavours so to do, not willingly leaving any of them behind in other Parts.

9thly. You are to take care, That the Prisoners which you shall take in any Prize Ship or Vessel, or so many of them as you may be able to keep under Command (especially the Officers or more Principal of them) be brought or sent into your Commission Port, or where else within Her Majesties Dominions you send your Prizes : To the intent there may be the more full Evidences for Condemning the same, and also an advantage for the Exchange of Prisoners.

Lastly. You are carefully to observe and keep all the foregoing Articles and Instructions, and not to make any breach thereof, or of Her Majesties Laws, respecting Letters of Reprisal, and Prize Ships and Goods; and to see that the full and just Parts and Shares of all such Vessels and Goods as shall be taken and seized by you, by Law accruing unto Her Majesty, and the Lord High Admiral, be duly and truly answered and paid.

Given under my Hand at Boston, the Thirteenth Day of July, in the Second Year of Her Majesties Reign, Annoque Domini, 1603.

Copy of the Instructions given unto me

Daniel Plowman.

Copy Examined, per Isaac Addington, Secr.

Read in Court per John Valentine, Register.

J. DUDLEY.

Copy of Capt. Daniel Plowman's Letters to Two of the Owners.

Mr. John Colman, and
Mr. William Clarke,

On Board the Briganteen Charles,
now Riding at Marblehead,
August 1st. 1703.

I Find every Day I grow worse and worse, and it is impossible for me to think to proceed. I hope to see you down to Morrow by Nine or Ten a Clock, that we may take some speedy care in saving what we can; the Lieutenant the Bearer can give you a full Account, whom I desire you to return withal: This being all from your

Humble Servant

Daniel Plowman.

Gentlemen,

On Board of the Briganteen Charles,
now Riding at Marblehead,
August 2d. 1703.

I Have heard you are come down, but am afraid I shall not see you, being taken very weak; now my humble Request is to you both, to let the Vessel be sent to Boston, and there all the things to be landed, in order to prevent all manner of Imbezelmments; and do not let any second Thoughts of a Voyage tempt you, for it will not do with these People; the sooner your things are landed on Shoar, the better. I doubt not but we shall be great Sufferers in getting things a Shoar: The main scope in writing this is, That you may not be drawn in to take a New Commander, and in Three Months all totally lost: I can see nothing else but that to be the whole end of of it, I am,

Gentlemen,

Your most Humble Servant,

Read in Court, John Valentine, Register.

Daniel Plowman.

Copy of the Owners Letter sent to the several Islands, in the West Indies.

S I R,

Boston August 18th 1703.

WE lately fitted out a New Briganteen, Capt. Daniel Plowman, to go into Canada River, &c. A Private Man of War; the Commander we fear is Dead, and the Men we are advised are in Rebellion against their Officers; and went away the 4th Currant with the Vessel, without notifying to any of us what their Intention was, which makes us fear their Design is not to do justly by us. If therefore the said Briganteen should come into any of your Ports, or bring or send any Prize within the same, we pray you to appear for us: Inclosed is a Letter from Col. Dudley, our Governor, to your Governor, about this Affair: Please to deliver the same, and inform him, we have wrote to your self to take care for us. You will find by the Articles Aboard, we are to have one Third of all Purchase for our Vessel and Provision. After the Vessel was fitted, we found the Men not able to fit themselves out, so we supplied about Three Hundred Pounds in Small Arms and Ammunition for them, for which we are to have 50 per Cent. Advance (and they to keep the Arms) out of their Shares of the First Purchase. We pray you also in time to secure the Briganteen's Stores from Imbezelmments; also Two Negroe Men belonging to Col. Hobbey, Namely Charles and Cesar, One Negro Boy belonging to Captain Plowman, named Mingo, and their Shares. The Briganteen send us for this Place, put some honest Man in Command of her, and lade in her our Parts of her Earnings, as also what you receive for our Arms, also the above Negroes

groes and their Shares, in any Goods proper for this Market, and be as Expeditious as may be. Any Civility your Governor shews us in this Affair, please to Retaliate. We have wrote to all the *Indies* to this Effect, not knowing where to meet her : Else had not given your Governor the Trouble of our Lines ; so please to excuse us to him, and give him our best Respects: VVe kiss your Hand, and remain,

S I R,

Your very Humble Servants

John Colman Deposeth on Oath this Copy of a Letter sent by the Owners, to Six Plantations in the *West Indies*.

Attested, *John Valentine*, Register.

Charles Hobbey for himself, and
Col. *Nicholas Paige*,
William Clarke,
Benjamin Gallop,
John Colman.

Copy of His Excellencies Letter to the several Governments in the *West Indies*.

S I R,

Boston, August 18th 1703,

I Lately gave Commission to Capt. *Daniel Plowman*, and a Letter of Mart for the Briganteen *Charles*, who sailed hence the 4th Currant, with about Seventy Men, a noble New Vessel perfectly fitted for the Service, with Stores of all sorts, by Col. *Paige*, Col. *Hobbey*, and several other Good and Loyal Gentlemen of this Government: Since which I am advised *Plowman* is Dead, and the Men are in Rebellion from their Officers, and have carried the Briganteen away. These are to pray of you, that if she come into any of your Ports or Harbours, you will please to secure the said Briganteen, and any Prize she may have with her, and Examine their Papers, and you will see what is above alledged. The Gentlemen Owners are Petitioners to me to me to pray farther, that their Vessel and Prize, if any, may be put into some Merchants Hands for their Security ; and that Advice may be given thereof, that they may do themselves Right thereby, and on Her Majesties Behalf I desire they may be prevented from any Piracy that such desperate Men may easily fall into. I am,

S I R,

Your very Humble Servant,

His Excellency owned in Court this is a Copy of a Letter sent to Six Governments in the West-Indies.

Joseph Dudley.

Read in Court, *John Valentine*, Register.

Copy of Mr. *J. Colman's* and Mr. *W. Clark's* Intimation of their Suspicion of *Quelch* and Company.

WE *John Colman*, and *William Clarke*, of the Town of *Boston*, Merchants, and being part Owners of the Briganteen *Charles*, lately fitted out as a Private Man of War, under Command of Captain *Daniel Plowman*, (since Deceased) against Her Majesties Open and Declared Enemies of *France* and *Spain*, &c. The said Vessel arriving from Sea some few Days since : By what we have observed of the Management of the present Commander and Company ; as also by what we find on Board the said Vessel moves us to suspect, That they have Plundered and made Spoil upon some of Her Majesties Friends and Allies, contrary to Her Majesties Declaration of War, and the Commission and Instructions given them.

Received this 23d of May, 1704.

By us *Isaac Addington*,
Paul Dudley.

John Colman,
William Clarke,

Mr. Secretary and *Paul Dudley*, Esquires, owned this when read in Court.

John Valentine, Register.

*A List of the Names and Ages of the Pyrates; and
where they were Born.*

1. **J**ohn Quelch, Mariner, Born in London, Aged about 38 Years.
 2. John Lambert, Mariner, Born in Salem, in New-England, Aged about 49 Years.
 3. John Miller, Shoemaker, Born in Yorkshire, Aged about 40 Years.
 4. Christoph. Scudamore, a Cooper, served his Time at Bristol in England, Aged about 28.
 5. Peter Roach, Sailer, Born in Ireland, Aged about 30 Years.
 6. Erasmus Peterson, Sailer, Born at in Switzerland, Aged about 25 Years.
 7. Francis King, Fisherman, Born at in Scotland, Aged about 32 Years.
 8. John Dorothy, Blacksmith, Born at Bristol in England, Aged about 25 Years.
 9. John Pitman, Sailer, Born at Bristol in England, Aged about 27 Years.
 10. Charles King, Sailer, Born at Bristol in England, Aged about 19 Years.
 11. Benjamin Perkins, Waterman, Born in London, Aged about 24 Years.
 12. William Jones, Sailer, Born in London, Aged about 24 Years.
 13. William Wilde, Sailer, Born in London, Aged about 27 Years.
 14. John Carter, Sailer, Born at Slego, in Ireland, Aged about 40 Years.
 15. Denis Carter, Sailer, Born at Londonderry, in Ireland, Aged about 32 Years.
 16. James Austin, Sailer, Born in London, Aged about 23 Years.
 17. John King, Goldsmith, Born at Amsterdam, Aged about 22 Years.
 18. Charles James, Mariner, Born in Gloucestershire in England, Aged about 54 Years.
 19. Rich. Lawrence, Fisherman, Born at Marblehead in New-England, Aged about 19.
 20. Nicholas Richardson, Fisherman, Born in the Island of Jersey, Aged about 20.
- William Whiting, Merchant, Born in London, Aged about 22 Years.
 John Templeton, a Scotch Youth, Aged about 15 Years.
 Matthew Pimer, Mariner, Born in Yorkshire in England, Aged about 40 Years.
 John Clifford, a Malster, Born in Dublin. Aged about 23 Years.
 James Parrot, a Tanner, Born in New England, Aged about 20 Years.

F I N I S.
